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dba Hyatt Regency San Francisco Airport, Jimmy
Flores, Ron Gray, Tom Phipps and Jose Reyes

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MHP

THROY OTANES,

Plaintiff,

v.

HYATT REGENCY HOTEL
(BURLINGAME), JIMMY FLORES,
RON GRAY, TOM PHIPPS, JOSE
REYES, and DOES ONE through FIFTY,

Defendants.

Case No. **CV 07**

5936

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. SECTION 1441(b)
(FEDERAL QUESTION)

Complaint Filed in State Court: May 15, 2007

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

Please take notice that Defendants Jimmy Flores, Ron Gray, Tom Phipps and Jose Reyes (hereinafter "Defendants") hereby give notice of removal of the above-captioned action from the Superior Court of California, County of San Mateo, Case No. CIV 463003, to the United States District Court, Northern District of California, and state:

1. On May 15, 2007, a civil action was commenced in the Superior Court of California for the County of San Mateo by the filing of a complaint entitled *Throy Otanes v. Hyatt Regency Hotel (Burlingame), Jimmy Flores, Ron Gray, Tom Phipps, Jose Reyes, and Does One through Fifty*, Case No. CIV 463003 ("the State Action") in the files of said court.

1 2. The first date of service of process on which any of the defendants was served in
2 this matter was on October 25, 2007, when Plaintiff Throy Otones (hereinafter "Plaintiff") served
3 Defendant Ron Gray with a copy of the Summons and Complaint in the State Action.

4 3. All served Defendants join in and consent to removal of this action. Defendant
5 Hyatt Corporation d/b/a Hyatt Regency San Francisco Airport (erroneously named herein as
6 "Hyatt Regency Hotel (Burlingame)") has not yet been served with the Complaint, but consents
7 to removal of this action and would join in removal if served with the Complaint.

8 4. Attached hereto as Exhibit A is a true and correct copy of the Civil Case Cover
9 Sheet (and accompanying documents), Summons and Complaint in the State Action, which
10 constitutes all of the papers and pleadings served on Defendants in the State Action.

11 5. This action is a civil action of which this Court has original jurisdiction under 28
12 U.S.C. § 1331, and is one which may be removed to this Court by Defendants pursuant to 28
13 U.S.C. § 1441(b), in that it states a claim arising under the Age Discrimination in Employment
14 Act of 1967 ("ADEA"), 29 U.S.C. § 621, *et seq.*, and Title VII of the Civil Rights Act of 1964
15 ("Title VII"), 42 U.S.C. § 2000e, *et seq.* (Plaintiff cites in the Complaint 42 U.S.C. § 20002-2(a),
16 a prior citation for § 2000e of Title VII.) Specifically, in the third cause of action beginning at
17 page 13 of the Complaint, Plaintiff alleges claims arising under 42 U.S.C. § 2000e in Counts 1, 3
18 and 4 at Paragraphs 46, 68, and 80. Plaintiff also alleges a claim under the ADEA in Count 2 of
19 the third cause of action at Paragraph 57. In addition, all other state claims arise out of the same
20 set of facts as the Title VII and ADEA claims and are part of the same case and controversy. This
21 Court, therefore, has supplemental jurisdiction over the state claims pursuant to 28 U.S.C. §
22 1367(a).

23 6. Written notice of the filing of this Notice of Removal is being served on Plaintiff's
24 counsel on this date, November 26, 2007.

25 7. A true and correct copy of this Notice of Removal is being filed this date,
26 November 26, 2007 with the Clerk of the Superior Court for the State of California, County of
27 San Mateo.

1 8. In that this Notice of Removal is filed within 30 days of the receipt by Ron Gray
2 (the first-served defendant), of the Summons and Complaint, removal of this action is timely. 28
3 U.S.C. § 1446(b); *see also Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344,
4 119 S.Ct. 1322, 1329 (1999) (removal period runs from simultaneous service of summons and
5 complaint).

6 WHEREFORE, Defendants hereby request that the civil action now pending against them
7 in the Superior Court of California, County of San Mateo, be removed to this Court as provided
8 by law.

9
10 Dated: November 26, 2007

FOLGER LEVIN & KAHN LLP



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12 Lisa M. van Krieken
13 Attorneys for Defendants
14 Hyatt Corporation dba Hyatt Regency San Francisco
Airport, Jimmy Flores, Ron Gray, Tom Phipps
and Jose Reyes

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